STATE OF MICHIGAN

COURT OF APPEALS

DONNA BOYER,

Plaintiff-Appellant,

v

TARGET CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 15, 2005

No. 251790
Macomb Circuit Court
LC No. 2002-001748-NO

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff claims that she reached up to a fireplace display at defendant's store to turn around a price tag hanging from the fireplace screen.[1] The fireplace screen toppled toward her, bringing down a display of fireplace utensils. Plaintiff fended off the screen with her left hand, but one of the utensils hit her right arm and shoulder. Plaintiff claims no knowledge regarding how or why the fireplace screen toppled.

Plaintiff argues that she presented sufficient facts to create a question of fact regarding defendant's negligent arrangement of the display. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). To establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004).

It is undisputed that plaintiff was defendant's business invitee when the accident occurred. "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the

[1] Defendant argues that it never used hanging price tags on these displays, but we present and review the facts in the light most favorable to plaintiff.

land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). Therefore, plaintiff's claim hinges on whether the display was an unreasonably dangerous condition.[2]

In essence, plaintiff argues that the display was not properly secured, defendant failed to warn customers of the danger, and defendant violated its own procedures. Approaching the last of these issues first, we reject the notion that defendant's failure to adhere to its own safety procedures automatically creates a question of fact regarding its negligence toward plaintiff. Plaintiff submitted testimony from defendant's employees who stated that displays of fireplace utensils and screens are supposed to be tied down. She also submitted employee testimony establishing that if such a display were tied down, it would not have fallen off the shelf. However, the fact that a business enacts an internal safety procedure does not automatically leave the business open to tort liability for its failure to follow it. The rules may reflect auspicious safety goals and the business's noble efforts to minimize any danger of harm, even those that only threaten its most careless customers. Basing liability on an employee's failure to comply with a self-imposed but austere safety code would discourage self-regulation altogether, leading invariably to less control over safety risks. It would elevate the legal standard beyond an unreasonably dangerous condition to any foreseen risk. The failure to take protective measures has little bearing on a defendant's breach of its duty to protect a plaintiff, and nothing to do with the existence of the duty in the first place. Therefore, the fact that defendant had a policy of tying down heavy or "tippy" displays is irrelevant to our determination of whether the display was unreasonably dangerous.

Regarding the other issues, plaintiff testified that she had no idea how the fireplace screen began to fall. Plaintiff claimed in her deposition that she merely reached up and turned around a price tag hanging from a string. Plaintiff did not testify that she pulled the string or otherwise moved the fireplace screen on top of her. While this testimony conveniently exonerates plaintiff from any negligence, it fails to explain how the admittedly heavy piece of furniture fell from its overhead shelf. Plaintiff does not claim that the shelf was unreasonably tilted toward her, or that an employee bumped the shelving unit or otherwise pushed over the screen and other accessories. Plaintiff may not create a genuine issue of fact by simply arguing that the equipment jumped off the shelf.

Nor does plaintiff present an adequate claim of res ipsa loquitor. Res ipsa loquitor is a doctrine that prevents defendants from hiding behind the causation element of negligence.

> [I]n order to avail themselves of the doctrine, plaintiffs . . . must meet the following conditions: (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not

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[2] The positioning of the display as described by plaintiff also raises the question of how open and obvious the display's dangers were. Defendant has no duty to protect shoppers from open and obvious dangers in its stores. *Lugo*, *supra*. Nevertheless, we need not resolve this question, because we find that plaintiff failed to present a material question of fact that the display was unreasonably dangerous.

have been due to any voluntary action or contribution on the part of the plaintiff. [*Jones v Porretta*, 428 Mich 132, 150-151; 405 NW2d 863 (1987).]

Here, the equipment was not within defendant's exclusive control, but within the control of plaintiff and countless other shoppers. A plaintiff may not simply claim ignorance of the impetus of an accident, make baseless guesses at why the accident happened, and still expect to prevail on a negligence claim. See *Latham v National Car Rental Systems, Inc*, 341-343; 608 NW2d 66 (2000). It seems plain to us that the fireplace screen and utensils were simply sitting unperturbed on a shelf, out of reach of children and above cart traffic. We fail to see how such a display, in itself, presents an unreasonable risk of danger to anyone. It follows that defendant was not required to warn its customers of the nonexistent danger, and the trial court correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell